

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
)	
Implementation of the Satellite Home Viewer)	
Extension and Reauthorization Act of 2004)	
)	
Implementation of Section 340 of the)	MB Docket No. 05-49
Communications Act)	
)	
)	

COMMENTS OF WHEC-TV, LLC

WHEC-TV, LLC, the licensee of WHEC-TV, Rochester, New York ("WHEC"), by its attorneys, hereby submits its Comments in response to the *Notice of Proposed Rulemaking*, FCC 05-24 (released February 7, 2005) ("Notice"), in the above-captioned proceeding. In its Notice, in which the Commission proposes new rules in compliance with the Satellite Home Viewer Extension and Reauthorization Act of 2004 ("SHVERA"), the Commission provides what it considers to be a current and accurate list of "significantly viewed" television stations by communities and counties nationwide.¹ The Commission invited interested parties to file comments at this time to offer corrections to the 2004 SV List.² WHEC hereby does so, asking that the Commission correct the 2004 SV List under the community of Rochester, New York, by deleting the listing of New York City Stations because, as demonstrated below, they are noted there incorrectly.³

¹ Notice, Appendix B (the "2004 SV List").

² "Parties may file comments in response to this Notice describing the nature and basis of any error, including changes in call sign or community. Such comments must include documentary evidence supporting the requested correction. If we find that a station or community has been listed in error, carriage of such signals in such communities will no longer be permitted pursuant to the significantly viewed provisions pertaining to satellite carriers." Notice at para 14.

³ The 2004 SV List notes WCBS-TV, WNBC, WNYW, WABC-TV and WWOR-TV as significantly viewed in Rochester, New York (2004 SV list, p. 290) (collectively, the "New York City Stations").

The list of significantly viewed television stations initially produced by the Commission in 1972 ("1972 SV List") correctly did not show any of the New York City Stations as significantly viewed in Rochester.⁴ Nor should it have. Attachment No. 1 hereto is a statement from WHEC's consulting engineers which shows that WHEC and the New York City Stations are about 400 kilometers (248 miles) distant from each other. Also, there is a gap of approximately 219 kilometers (135 miles) between the Grade B contour of WHEC and the Grade B contours of each of the New York City Stations, proving that they cannot be viewed off the air in Rochester and thus cannot be significantly viewed.

In addition, Attachment No. 2 hereto is the Declaration of Arnold Klinsky, WHEC's Vice President and General Manager, who has been a broadcast professional in Rochester for more than 21 years. Mr. Klinsky establishes as a matter of fact that the cable television systems operating in the Rochester Designated Market Area ("DMA") have not carried signals of any of the New York City Stations during the past 21 years.⁵

As further support for the correction to the 2004 SV List requested by WHEC, Attachment No. 3 hereto is a copy of a map showing all of the DMAs in New York State, including Rochester and New York City.⁶ As Attachment No. 3 shows, the Rochester and New York City DMAs are distant from each other and separated by portions of four other DMAs: Elmira, New York; Binghamton, New York; Utica, New York; and Syracuse, New York. As the map further indicates, the city of Rochester is in Monroe County, in the northern part of the DMA. That leaves Ontario and Yates Counties, also part of the Rochester DMA, between the cities of Rochester and New York, yet the New York City Stations are not shown as significantly

⁴ The Commission has not been able to make its unpublished significantly viewed decisions readily available prior to the preparation of WHEC's Comments. WHEC reserves the right to address any decisions which may come to its attention subsequently.

⁵ Mr. Klinsky indicates that at some time the WWOR "super station" was carried but not the actual terrestrial signal of WWOR-TV.

⁶ *Television and Cable Factbook 2004*, Volume I, p. A-1359 (Warren Communications News 2004).

viewed in Ontario and Yates Counties in the 2004 SV List.

Therefore, the 2004 SV List should be corrected by removing the New York Stations as significantly viewed in Rochester.

Respectfully submitted,

WHEC-TV, LLC

A handwritten signature in black ink, appearing to read 'Marvin Rosenberg', is written over a horizontal line.

Marvin Rosenberg
Charles R. Naftalin
HOLLAND & KNIGHT LLP
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(202) 955-3000

April 8, 2005

Its Attorneys

ATTACHMENT NO. 1



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**TECHNICAL STATEMENT
SUPPORTING THE COMMENTS FROM
WHEC-TV, LLC**

This Technical Statement was prepared on behalf of WHEC-TV, LLC, licensee of TV station WHEC-TV on analog (NTSC) channel 10 at Rochester, New York (Facility ID 70041). It reports on studies concerning the predicted coverage of WHEC-TV as compared to 5 New York City market TV stations.

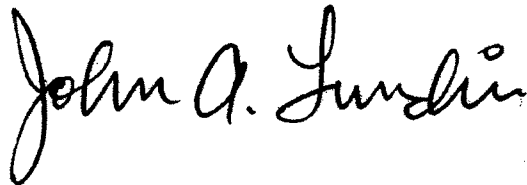
According to the Federal Communications Commission (FCC) database, station WHEC-TV is licensed to operate on channel 10 at Rochester, New York (BLCT-2420). A non-directional (ND) antenna system is authorized. The visual effective radiated power (ERP) is 316 kilowatts (kW). The antenna center of radiation is located 301 meters above mean sea level (AMSL). The antenna height above average terrain (HAAT) is 152 meters. The site coordinates are 43-08-07, 77-35-02 (NAD-27).

The following is a list of 5 New York City TV market stations that are alleged to be significantly viewed in the Rochester market area. Technical parameters as shown in the FCC database for the license operation of each station are given.

<u>Call Letters</u>	<u>Location</u>	<u>Channel</u>	<u>ERP</u>	<u>HAAT</u>	<u>Coordinates</u>
WCBS-TV	New York, NY	2	45 kW-ND	389 m	40-44-54, 73-59-10
WNBC(TV)	New York, NY	4	17.4 kW-ND	515	40-42-43, 74-00-49
WNYW(TV)	New York, NY	5	17.4 kW-ND	515	40-42-43, 74-00-49
WABC-TV	New York, NY	7	64.6 kW-ND	491	40-42-43, 74-00-49
WWOR-TV	Secaucus, NJ	9	61.7 kW-ND	500	40-42-43, 74-00-49

Figure 1 is a map showing the predicted Grade B contours for WHEC-TV and the 5 New York City TV market stations. Station WHEC-TV and the 5 New York City market stations are separated by approximately 400 kilometers. There is a gap of approximately 219 kilometers between the WHEC-TV Grade B contour and the Grade B contours for the 5 New York City market stations. As shown on Figure 1, it is impractical for the 5 New York City market TV stations to be significantly viewed off-the-air in the Rochester, New York market.

If there are questions concerning this Technical Statement, please communicate with the office of the undersigned.

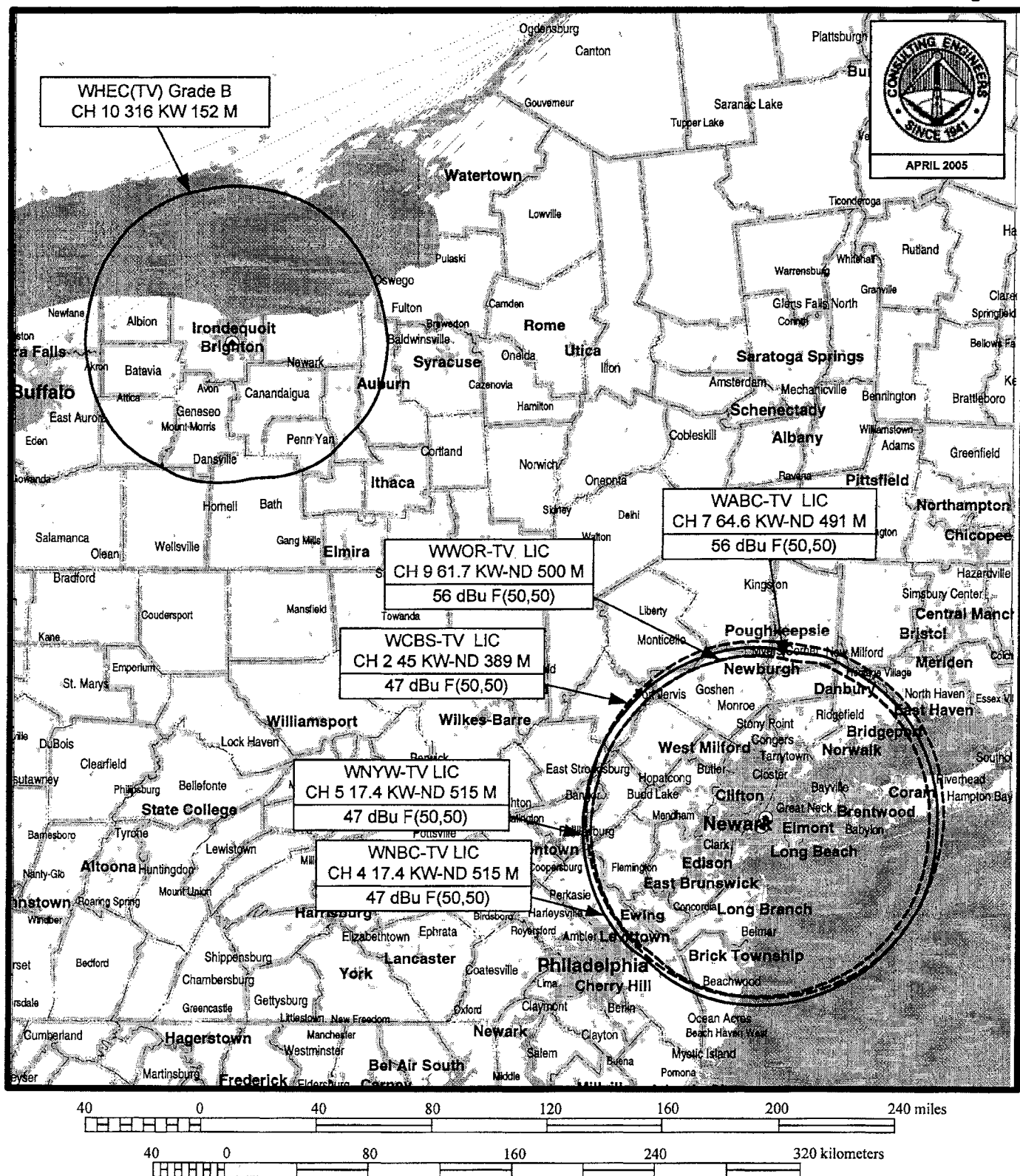
A handwritten signature in black ink that reads "John A. Lundin". The signature is written in a cursive style with a large, stylized 'J' and 'L'.

John A. Lundin, P.E.
Florida Registration No. 46454
DC Registration No. 7499

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April 5, 2005

Figure 1



PREDICTED GRADE B COVERAGE CONTOURS

STATION WHEC
ROCHESTER, NEW YORK

du Treil, Lundin & Rackley, Inc. Sarasota, Florida

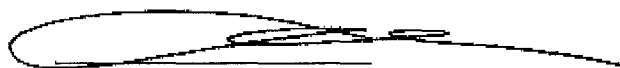
ATTACHMENT NO. 2

DECLARATION OF ARNOLD KLINSKY

I, Arnold Klinsky, Vice President and General Manager of WHEC-TV, LLC, hereby declare, subject to the penalty of perjury, that the following is true and correct to the best of my knowledge, information and belief.

I have been part of the preparation of the WHEC-TV, LLC Comments dated April 8, 2005, to be submitted to the Federal Communications Commission ("FCC") asking that the FCC correct the list of significantly viewed television stations attached as Appendix B to the FCC's *Notice of Proposed Rulemaking*, FCC 05-24 (released February 7, 2005).

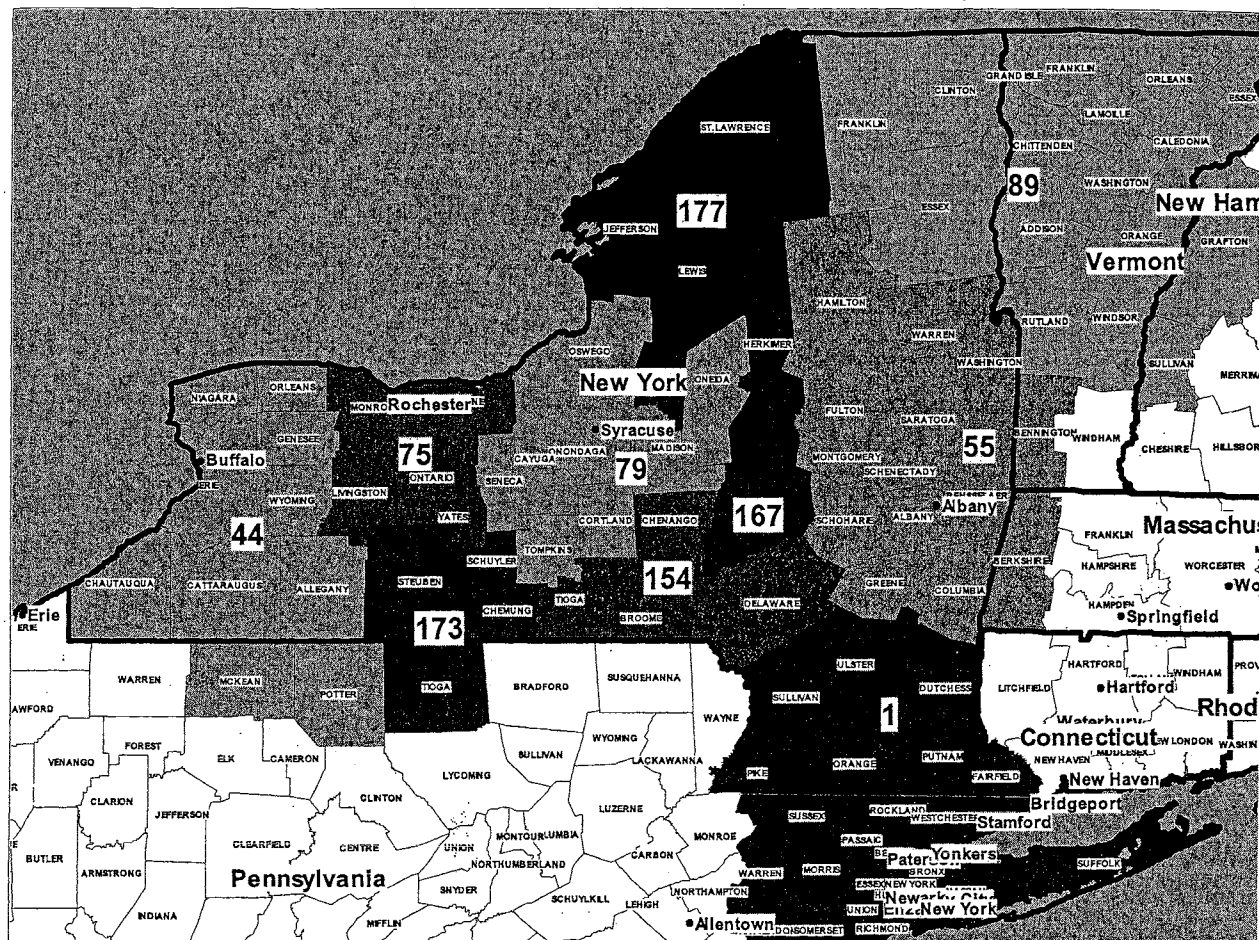
I have been part of the management of WHEC-TV, Rochester, New York, since December 1983. I have been a broadcast station professional in the Rochester, New York Designated Market Area ("DMA") continuously for more than 21 years. During all of my experience in the Rochester DMA, none of the following television stations serving the New York City DMA have been carried by cable television systems serving the Rochester DMA: WCBS-TV, WNBC, WNYW, WABC-TV and WWOR-TV, except that at some time the WWOR "super station" was carried, but not the terrestrial service of WWOR-TV.



Arnold Klinsky
Vice President and General Manager
WHEC-TV, LLC

Dated: April 7, 2005

ATTACHMENT NO. 3



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MARKET	NIelsen DMA TV HOUSEHOLDS	RANK	MARKET AREA COMMERCIAL STATIONS
New York, NY	7,376,330	1	WABC-DT (45); WABC-TV (7); WCBS-DT (56); WCBS-TV (2); WFTY (67); WFTY-DT (23); WFUT (68); WLNY (55); WLNY-DT (57); WMBC-DT (18); WMBC-TV (63); WNBC (4); WNBC-DT (28); WNJU (47); WNYW (5); WNYW-DT (44); WPIX (11); WPIX-DT (33); WPXN-TV (31); WRNN-DT (48); WRNN-TV (62); WSAH (43); WTBY-DT (27); WTBY-TV (54); WWOR-TV (9); WXTV (41); WXTV-DT (40)
Buffalo, NY	647,920	44	WGRZ-DT (33); WGRZ-TV (2); WIVB-DT (39); WIVB-TV (4); WKBW-TV (7); WNGS (67); WNLO (23); WNYB (26); WNYO-TV (49); WPXJ-TV (51); WUTV (29)
Albany-Schenectady-Troy, NY	542,670	55	WCDC (19); WCDC-DT (36); WEWB-TV (45); WNYT (13); WNYT-DT (12); WRGB (6); WRGB-DT (39); WTEN (10); WXXA-TV (23); WYPX (55)
Rochester, NY	395,350	75	WHEC-DT (58); WHEC-TV (10); WOKR (13); WOKR-DT (59); WROC-DT (45); WROC-TV (8); WUHF (31)
Syracuse, NY	384,290	79	WIXT-TV (9); WNYS-TV (43); WSPX-TV (56); WSTM-DT (54); WSTM-TV (3); WSYT (68); WSYT-DT (19); WTVH (5)
Burlington, VT-Plattsburgh, NY	323,070	89	WCAX-TV (3); WFFF-TV (44); WNEE (31); WNEE-DT (25); WPTZ (5); WPTZ-DT (14); WVMY (22)
Binghamton, NY	139,190	154	WBNG-DT (7); WBNG-TV (12); WICZ-TV (40); WIVT (34)
Utica, NY	105,300	167	WFVY (33); WKTV (2); WUTR (20)
Elmira (Corning), NY	97,690	173	WENY-TV (36); WETM-TV (18); WYDC (48); WYDC-DT (50)
Watertown, NY	91,280	177	WWNY-DT (35); WWNY-TV (7); WWTI (50); WWTI-DT (21)

New York Digital Station Totals as of March 1, 2004

	VHF	UHF	TOTAL
Commercial Television	3	19	22
Educational Television	0	8	8
	3	27	30

New York Analog Station Totals as of March 1, 2004

	VHF	UHF	TOTAL
Commercial Television	21	29	50
Educational Television	1	11	12
	22	40	62